



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1513

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**PUBLIC SERVICE
COMMISSION**

April 12, 2004

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: In the Matter of:
Petition for Arbitration of US LEC of Tennessee, Inc.,
of an Amendment to an Interconnection Agreement with
BellSouth Telecommunications, Inc., Pursuant to Section 252(b)
of the Communications Act of 1934, as Amended

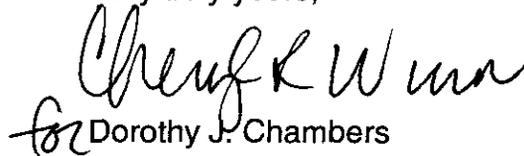
Petition of US LEC of Tennessee, Inc., to Resolve
Dispute with BellSouth Telecommunications, Inc., on
Change of Law Provisions to the Interconnection Agreement

P.S.C. Case No. 2004-00087

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) paper copies of BellSouth's Response to the Petition for Arbitration of US LEC of Tennessee, Inc. Exhibit A to the Response has two parts: Attachment 2 to the Interconnection Agreement, Network Elements and Other Services, and the Unbundled Network Elements Rates. Eleven CDs containing Exhibit A are provided to the Commission. The Issues Matrix is attached to the Response as Exhibit B. A copy of the entire filing is served on each party.

Very truly yours,


for Dorothy J. Chambers

Enclosures
cc: Parties of Record
534666

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Petition for Arbitration of US LEC of Tennessee Inc.)
Of an Amendment to an Interconnection Agreement with)
BellSouth Telecommunications, Inc. Pursuant to) Case No. 2004-00087
Section 252(b) of the Communications Act of 1934,)
as Amended)
)
Petition of US LEC of Tennessee Inc. to Resolve Dispute)
With BellSouth Telecommunications, Inc. on Change of)
Law Provisions to the Interconnection Agreement)
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.’S RESPONSE TO
US LEC OF TENNESSEE INC.’S PETITION FOR ARBITRATION**

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. (“BellSouth”), responds to the Petition for Arbitration (“Petition”) filed by US LEC of Tennessee Inc. (“US LEC”) and says:

Sections 251 and 252 of the Telecommunications Act of 1996 (“1996 Act”) encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2)-(6).

As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.¹ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.² The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the

¹ 47 U.S.C. § 252(b)(2).

² See generally, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties.”³ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after a commission receives the petition.⁴ The 1996 Act limits a commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁵

Through the arbitration process, a commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once a commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to a commission for approval.⁶

BellSouth and US LEC previously entered into an Interconnection Agreement (“Prior Agreement”) in Kentucky that expired on December 31, 2003. Instead of negotiating a new agreement, US LEC chose to adopt another carrier’s agreement pursuant to Section 252(i) of the 1996 Act. However, because the Federal Communication Commission’s (“FCC”) Triennial Review Order (“TRO”) materially altered the terms and conditions of Attachment 2 in the agreement to be adopted, BellSouth requested that the parties negotiate a new Attachment 2 for said agreement, which would be included in US LEC’s new agreement (“New Agreement”).

³ 47 U.S.C. § 252(b)(2).

⁴ 47 U.S.C. § 252(b)(3).

⁵ 47 U.S.C. § 252(b)(4).

⁶ 47 U.S.C. § 252(a).

The parties have engaged in good faith negotiations in this regard as they have reduced the number of disputed items from 28 to 13. Notwithstanding these good faith efforts, they have been unable to reach agreement on all of the issues related to Attachment 2. As a result, US LEC filed this Petition pursuant to the 1996 Act. Because the Prior Agreement has expired and because US LEC raised this matter pursuant to Section 252(b) of the 1996 Act, US LEC's alternative request for relief pursuant to the Change in Law provision in the Prior Agreement is irrelevant and not necessary to resolve the instant matter.

BellSouth hereby responds to each of the separately numbered paragraphs of US LEC's Petition:

I. THE PARTIES AND CONTACT INFORMATION

1. BellSouth denies the allegations of Paragraph 1 of Section I of the Petition, except to admit that US LEC is a local exchange service provider in Kentucky.
2. The allegations in Paragraph 2 of Section I of the Petition require no response from BellSouth.
3. The allegations in Paragraph 3 of Section I of the Petition require no response from BellSouth. BellSouth admits the allegations in Paragraph 3 of Section I of the Petition.
4. BellSouth admits the allegations in Paragraph 4 of Section I of the Petition.
5. BellSouth denies the allegations in Paragraph 5 of Section I of the Petition, except to admit that all correspondence, notices, inquiries and orders regarding this Petition should be directed to the undersigned.

II. STATEMENT OF FACTS

6. BellSouth denies Paragraph 6 of Section II, except to admit that, on or about October 8, 2003, BellSouth received a request from US LEC to amend the Prior Agreement to implement the TRO.

7. BellSouth admits Paragraph 7 of Section II of the Petition.

8. BellSouth admits Paragraph 8 of Section II of the Petition.

9. BellSouth denies the allegations contained in Paragraph 9 of Section II of the Petition, except to admit that BellSouth rejected US LEC's proposed TRO Amendment and advised US LEC on November 5, 2003 that BellSouth will present a new Attachment 2 to reflect the changes and modifications that were necessary as a result of the TRO.

10. BellSouth denies the allegations contained in Paragraph 10 of Section II of the Petition, except to admit that BellSouth provided a template agreement for Attachment 2 on December 12, 2003 and that the parties have been negotiating from this template.

11. BellSouth admits the allegations of Paragraph 11 of Section II of the Petition.

12. BellSouth admits the allegations of Paragraph 12 of the Section II of the Petition and states that BellSouth has negotiated in good faith with US LEC regarding Attachment 2 and the TRO. The parties have continued to negotiate and exchange redlines of the Attachment 2 template since the filing of this Petition. The current resolved and unresolved provisions of Attachment 2 are accurately reflected in Exhibit A attached hereto.

13. BellSouth denies the allegations of Paragraph 13 of Section II of the Petition, except to admit that the Prior Agreement expired on December 31, 2003 and that US LEC has previously requested to adopt the agreements of other carriers.

14. BellSouth denies the allegations of Paragraph 14 of Section II of the Petition, except to admit that (1) US LEC requested a negotiation session on March 4, 2004 – only three days after submitting its redlined version of Attachment 2 to BellSouth; (2) the D.C. Court of Appeals issued its decision in USTA v. FCC, No. 000-00012 (D.C. Circuit, Mar. 2, 2004) (“USTA II”) on March 2, 2004; and (3) BellSouth requested that negotiations be postponed until the parties had time to consider the effect of D.C. Circuit’s decision in USTA II on Attachment 2.

15. BellSouth denies Paragraph 15 of Section II of the Petition, except to admit that US LEC attached Exhibits A and B to its Petition. These exhibits do not accurately reflect the current status of the parties’ negotiations.

III. JURISDICTION

16. The referenced provisions of the 1996 Act speak for themselves and require no response from BellSouth. BellSouth agrees with US LEC’s calculations regarding the deadline for filing the Petition and for a decision by the Commission. BellSouth, however, denies any remaining allegations contained in Paragraph 16 of Section III.

17. The referenced provisions of the Prior Agreement and the TRO speak for themselves and require no response from BellSouth. Further, BellSouth denies US LEC’s alternative request to invoke the Change in Law provision contained in the Prior Agreement to resolve the instant dispute. As stated above, because the Prior Agreement has expired and because US LEC raised this matter pursuant to Section 252(b) of the 1996 Act, US LEC’s alternative request for relief pursuant to the Change of Law request is irrelevant and not necessary to resolve the instant matter. BellSouth denies any remaining allegations contained in Paragraph 17 of Section III.

IV. UNRESOLVED ARBITRATION ISSUES AND THE POSITION OF THE PARTIES

17a.⁷ Although not reflected in separately numbered paragraphs, pages 7 through 25 of the Petition set forth the unresolved issues and the Parties' positions of those unresolved issues as understood by US LEC. BellSouth denies the allegations contained in Paragraph 17a of Section IV of the Petition as well as any allegation that pages 7 through 25 of the Petition accurately and completely set forth BellSouth's positions on the issues. Consistent with Section 252(b)(3) of the 1996 Act, BellSouth prepared an Issues Matrix, attached hereto as Exhibit B, which sets forth a neutral wording of the issues to be decided by the Kentucky Public Service Commission ("Commission") and a summary of BellSouth's positions on each of the unresolved issues to be decided by the Commission. BellSouth denies any remaining allegations in pages 7 through 25 of the Petition. Because the parties are still negotiating and some ambiguity remains as to US LEC's position on certain issues, BellSouth reserves the right to modify the Issues Matrix.

V. PROCEDURAL MATTERS

18. BellSouth avers that the referenced provision of the 1996 Act speaks for itself and requires no response from BellSouth. BellSouth has no objection to the Commission issuing a procedural schedule for this matter, although it does specifically object to US LEC's request for a discovery schedule and to the other procedural requests to the extent they conflict with the procedural schedules and practices contained in the Commission's Rules. BellSouth denies any remaining allegations in Paragraph 18 of Section V of the Petition.

⁷ US LEC's Petition contains two paragraphs enumerated as Number 17. Accordingly, in its Response, BellSouth has designated the second Paragraph 17 as Paragraph 17a.

VI. CONCLUSION AND PRAYER

19. BellSouth denies the allegations in the Paragraph 19 of Section VI of the Petition. BellSouth affirmatively avers that the Commission should reject US LEC's positions on each and every one of the issues set forth herein and, instead, adopt BellSouth's positions on each and every issue set forth herein.

20. BellSouth notes that national and state telecommunications law and policy is in a state of flux, which could impact the issues presented to the Commission for resolution in this arbitration. Indeed, the current legal and regulatory uncertainty may potentially impact even those provisions of the parties' New Agreement that are not currently in dispute. In the event changes and/or clarifications of the law impact the disputed and/or undisputed provisions of the parties' New Agreement (and the parties are unable to agree on how any such changes and/or clarifications are to be incorporated into the parties' Interconnection Agreement), BellSouth reserves the right to seek further redress from the Commission on those issues as well the right to amend its statement of issues, position statements, and testimony submitted in this proceeding.

21. In addition, US LEC has agreed to dismiss without prejudice the proceeding entitled In the Matter of: Adoption of Interconnection Agreement between BellSouth Telecommunications, Inc. and Time Warner Telecom of Ohio by US LEC of Tennessee ("Notice of Intent"), filed on March 8, 2004, and incorporate that matter into this arbitration proceeding. However, upon information and belief, US LEC has not amended its Petition for Arbitration or disputed issue list to set forth any allegations or issues that are in the Notice of Intent but not in the Petition. Accordingly, BellSouth reserves the right to amend this Response and Issues Matrix to specifically address any issue or allegation in the Notice of Intent that US LEC intends

to litigate in this proceeding. In an abundance of caution, to the extent US LEC has implicitly asserted the allegations raised in the Notice of Intent herein, BellSouth denies those allegations.

22. BellSouth denies each and every allegation in the Petition not expressly admitted herein, and demands strict proof thereof.

Respectfully submitted, this 12th day of April 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



DOROTHY J. CHAMBERS
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
(502) 582-8219

R. DOUGLAS LACKEY
E. EARL EDENFIELD JR.
JAMES MEZA III
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 335-0763

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

534620

EXHIBIT B

US LEC / BELLSOUTH ARBITRATION ISSUES MATRIX

ISSUE NO.	ISSUE DESCRIPTION	US LEC'S POSITION	BELLSOUTH'S POSITION
A-1	<p>What statutes, regulations or other laws, rules and regulations govern BellSouth's obligation to provide unbundled network elements under this Agreement?</p> <p>(Section 1.1)</p>	<p>US LEC believes that BellSouth is obligated to provide access to unbundled network elements under Sections 251(c)(3) and 271(c)(2)(B)(ii) of the Act, Part 51 of the FCC's rules, or as required by the Commission pursuant to Section 252(e)(3), <i>i.e.</i>, Applicable Law, and may only restrict or limit access to unbundled network elements as prescribed by Applicable Law.</p>	<p>The New Agreement is a Section 251 contract. As a result, the state commission, in arbitrating these disputes, is acting under its delegated authority under Section 251. Consequently, the New Agreement should not include any rights and obligations that arise from any independent state authority.</p>
A-3	<p>What charges may BellSouth charge for the conversion of wholesale services to Network Elements or Network Elements to wholesale services)?</p> <p>(Sections 1.6, 1.7.2)</p>	<p>BellSouth may not charge a non-recurring charge for the conversion of wholesale services to the equivalent Network Element.</p>	<p>Commission ordered "switch-as-is" nonrecurring rates should apply to the conversion of wholesale services to unbundled network elements or combinations thereof. For conversions of unbundled network elements to wholesale services, US LEC should pay the applicable charges pursuant to the tariff or contract to which such network elements are being transitioned in addition to the applicable disconnect charges under the New Agreement.</p>

EXHIBIT B

ISSUE NO.	ISSUE DESCRIPTION	US LEC'S POSITION	BELLSOUTH'S POSITION
A-5	<p>(a) How should the vacatur of the FCC Rules and Orders be implemented under this agreement?</p> <p>(b) What rates, terms, and conditions should apply for the transition of unbundled network elements or combinations thereof that are no longer offered pursuant to or no longer in compliance with the New Agreement? (Section 1.5)</p>	<p>US LEC objects to the elimination of Network Elements without a notice provision. In the event a Network Element or service is no longer available under the terms of the Agreement, US LEC seeks a 90 day period from the date that BellSouth provides notice to US LEC of those services that BellSouth considers no longer available under the agreement. Conversion, in addition to rearrangement or disconnection, should be an option as well.</p>	<p>(a) Upon effective date of vacatur, the parties should cooperatively transition the embedded base of unbundled network elements and combinations thereof and services to tariff services offered pursuant to a separate agreement. Such transition should be completed within 30 days. If US LEC fails to cooperate or refuses to transition its embedded base within this 30 day period, BellSouth may disconnect services to US LEC but only after giving 30 days additional notice. The appropriate tariff or contract rate should apply from the effective date of the vacatur.</p> <p>(b) US LEC must submit orders to rearrange, disconnect, or convert services within 30 calendar days of execution of the New Agreement. If US LEC fails to submit orders, BellSouth shall provide notice of noncompliance and give US LEC additional 16 days notice to submit orders or the services will be disconnected. If US LEC fails to submit orders within 30 days, US LEC should pay applicable tariff or new contract rate from the effective date of the agreement. US LEC should reimburse BellSouth all costs associated with identifying any services for which orders have not been submitted to be transitioned by US LEC</p>
A-6	<p>What is the process for asking BellSouth to perform routine network modifications and what charges may BellSouth impose for performing such modifications? (Section 1.7.4)</p>	<p>BellSouth must establish non-discriminatory processes and pricing, consistent with Section 252(d)(2) of the Act, for routine network modifications.</p>	<p>US LEC should submit service inquiries to request routine network modifications to the extent BellSouth does not perform such routine network modifications during normal operations. Each request should be handled on a individual project basis and BellSouth will provide a price quote for such project. BellSouth will perform the requested routine network modifications upon receipt of payment.</p>

EXHIBIT B

ISSUE NO.	ISSUE DESCRIPTION	US LEC'S POSITION	BELLSOUTH'S POSITION
A-7	Is BellSouth required to permit commingling of unbundled network elements or combinations thereof with any service, network or other offering that BellSouth is obligated to make available only pursuant to Section 271 of the Act? (Sections 1.1.1, 1.7.5)	BellSouth must continue to provide access to unbundled network elements required by Section 271 of the Act under the Agreement even if it no longer is required to provide such elements pursuant to Sections 251 or 252 of the Act or the FCC's rules.	No. Pursuant to the FCC's errata in the TRO, there is no obligation to commingle with 271 unbundled network elements or services.
A-8	Is BellSouth obligated to commingle unbundled network elements or combinations thereof with wholesale services or facilities that are not telecommunications services? (Section 1.8.1)	The definition of "commingling" should track the FCC's rules' definition.	No. The commingling obligation is limited to telecommunications services and should not be more broadly applied to other services, including services over which the Commission has no jurisdiction.
A-9	What rate should apply to multiplexing equipment that is attached to commingled circuits? (Sections 1.8.4)	The multiplexing equipment and Central Office interface Channel interfaces should be billed from the jurisdictional authority of the lower bandwidth service.	The multiplexing equipment should be billed from the same agreement or tariff as the higher bandwidth of services attached to the multiplexing equipment.
A-12	(a) Is BellSouth obligated to restore the copper loop if it is not technically feasible to do so? (b) What interval should apply to the determination of technical feasibility and provisioning of the loop? (Section 2.1.1.5)	If a copper loop is available, BellSouth is required to restore it to service, and, if it cannot, then it must provide the 64kbps narrowband voice grade channel to US LEC on the same interval as an equivalent Loop without additional costs to US LEC.	(a) No. (b) BellSouth should have 60 days to determine the technical feasibility of restoring a loop. The interval for provisioning such a loop should be mutually negotiated between the parties and based on the physical condition of the loop.
A-17	Can BellSouth decline to make available Dark Fiber Loops or Dark Fiber Transport if it has plans to use it within a two-year planning period? (Sections 2.8.6.3.1, 6.4.3.1)	BellSouth should not be permitted to decline to make unbundled dark fiber (either loops or transport) available based on such an extended planning period.	If BellSouth has allocated fiber to a defined network planning project for a two year period, said fiber should not be available for use during this two year time period.

EXHIBIT B

ISSUE NO.	ISSUE DESCRIPTION	US LEC'S POSITION	BELLSOUTH'S POSITION
A-18	Should there be a limit to the amount that US LEC should pay for a loop to be restored to its original state when US LEC requests that BellSouth modify a loop such that voice services on the loop are significantly degraded? (Section 3.1.8)	BellSouth should apply the same charges to restore the loop that was significantly degraded for the purpose of providing xDSL service as BellSouth charged US LEC to modify the loop for the purpose of providing xDSL service.	No. US LEC should be required to pay all costs incurred in restoring a loop to its original state.
A-19	What rate should apply for currently combined unbundled network elements for which there is no specific rate set forth in the New Agreement for such currently combined unbundled network elements? (Section 5.4.1)	Rates should be negotiated between the parties.	The rate should be the sum of the Commission approved recurring rates for the individual unbundled network elements in addition to the applicable Commission approved nonrecurring "switch-as-is" charges.
A-20	What reference to the FCC's rules should apply to routine network modifications (Section 1.7.4)	47 CFR Part 51 should apply.	47 CFR 51.319(a)(8) and (e)(5) should apply.
A-21	Can US LEC adopt an agreement that has not been amended to incorporate the TRO when the Change in Law provision of US LEC's current agreement has been triggered?	Yes.	No.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Response of BellSouth Telecommunications, Inc. on all parties of record by electronic mail and/or placing a copy of same in the United States Mail, postage prepaid, on this the 12th day of **April, 2004**.

Gregory R. Wann

SERVICE LIST – PSC 2004-00087

Honorable Douglas F. Brent
Attorney at Law
Stoll, Keenon & Park, LLP
2650 AEGON Center
400 West Market Street
Louisville, KY 40202
brent@skp.com

Wanda G. Montano
Vice President
US LEC Corp.
Morrocroft III
6801 Morrison Boulevard
Charlotte, NC 28211
wmontano@uslec.com

Terry J. Romine
Deputy General Counsel - Regulatory
US LEC Corp.
Morrocroft III
6801 Morrison Boulevard
Charlotte, NC 28211
terry.romine@telcove.com